

**Yard Waste Processing Contract
Between the City of Seattle and
Cedar Grove Composting Inc.**

Contents

A. OVERVIEW	1
SECTION 10. <u>PURPOSE AND INTENT</u>	1
SECTION 15. <u>CONTRACT TERM</u>	1
SECTION 20. <u>DEFINITIONS</u>	1
SECTION 25. <u>CITY RESPONSIBILITIES</u>	2
SECTION 30. <u>CONTRACTOR RESPONSIBILITIES</u>	3
SECTION 40. <u>CONTRACTOR REPRESENTATIONS AND WARRANTIES</u>	3
SECTION 50. <u>CITY REPRESENTATIONS AND WARRANTIES</u>	4
SECTION 60. <u>OSHA/WISHA, HEALTH AND ENVIRONMENTAL LAWS</u>	5
SECTION 70. <u>CONTRACTOR'S OFFICE</u>	5
B. PROCESSING SERVICES	5
SECTION 100. <u>YARD WASTE PROCESSING</u>	5
SECTION 110. <u>PRIMARY YARD WASTE PROCESSING FACILITY</u>	5
SECTION 120. <u>BACK-UP YARD WASTE PROCESSING FACILITY</u>	6
SECTION 130. <u>FOOD WASTE/VEGETATIVE FOOD WASTE PROCESSING</u>	7
SECTION 140. <u>HANDLING/DISPOSAL OF CONTAMINATED WASTE</u>	7
SECTION 150. <u>MARKETING OF MATERIAL</u>	8
SECTION 160. <u>DISPOSAL PROHIBITION</u>	8
SECTION 170. <u>PILOT TESTS</u>	8
C. REPORTING REQUIREMENTS	8
SECTION 200. <u>WEIGHT RECEIPTS</u>	8
SECTION 210. <u>MONTHLY, QUARTERLY AND ANNUAL REPORTS</u>	8
D. COMPENSATION	9
SECTION 300. <u>PAYMENT FOR PROCESSING SERVICES</u>	9
SECTION 310. <u>ADJUSTMENTS IN SUBSEQUENT CONTRACT YEARS</u>	9
SECTION 320. <u>PAYMENT PROCEDURE</u>	10
SECTION 330. <u>WAGE INCREASES FOR EMPLOYEES</u>	10
SECTION 340. <u>WITHHOLDING AND PAYMENT OF TAX LIENS AND JUDGMENTS</u>	10
SECTION 350. <u>WITHHOLDING AND PAYMENT TO WORKERS</u>	10
E. EQUAL OPPORTUNITY, NON-DISCRIMINATION AND WMBE	10
SECTION 400. <u>EQUAL EMPLOYMENT OPPORTUNITY</u>	10
SECTION 410. <u>EQUAL EMPLOYMENT OPPORTUNITY - IMPLEMENTATION</u>	11
SECTION 420. <u>CONTRACTOR'S HIRING GOALS</u>	11
SECTION 450. <u>NON-DISCRIMINATORY SERVICE</u>	12
SECTION 460. <u>WOMEN AND MINORITY BUSINESS ENTERPRISE REQUIREMENTS</u>	12
SECTION 470. <u>NONDISCRIMINATION IN EMPLOYEE BENEFITS</u>	13
F. SECURITY, LIABILITY AND DAMAGES	14
SECTION 500. <u>PERFORMANCE BOND</u>	14
SECTION 510. <u>DEFAULT OF CONTRACTOR</u>	14

SECTION 520. <u>INSURANCE</u>	16
SECTION 530. <u>INDEMNITY</u>	18
G. ANCILLARY PROVISIONS	19
SECTION 600. <u>ASSIGNMENT OR PLEDGE OF MONEYS BY THE CONTRACTOR</u>	19
SECTION 610. <u>ASSIGNMENT; SUBCONTRACTING; DELEGATION OF DUTIES</u>	19
SECTION 620. <u>RECORDS</u>	19
SECTION 630. <u>CONTRACT RIGHTS</u>	19
SECTION 640. <u>INTERPRETATION</u>	20
SECTION 650. <u>LAW; VENUE</u>	20
SECTION 660. <u>NOTICES</u>	20
SECTION 670. <u>SEVERABILITY</u>	20

**YARD WASTE PROCESSING CONTRACT
BETWEEN THE CITY OF SEATTLE
AND CEDAR GROVE COMPOSTING, INC.**

THIS YARD WASTE PROCESSING CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington acting by and through Seattle Public Utilities (SPU)(“City”), and CEDAR GROVE COMPOSTING, INC. (“Contractor”) to provide for processing of Yard Waste (as hereinafter defined) delivered to the Contractor’s processing facility.

The parties, in consideration of the promises, representations and warranties contained herein, agree as follows:

A. OVERVIEW

Section 10. Purpose and Intent.

This Contract engages Contractor to process into a marketable product, at a facility(ies) identified in Sections 110 and 140, all Yard Waste that has been collected under separate City collection contracts or delivered to the City’s transfer stations.

At the City’s option, the Contractor shall begin processing co-mingled Yard Waste and Food Waste or co-mingled Vegetative Food Waste and Yard Waste in accordance with Section 130. This option will not be exercised prior to April 1, 2002. The City shall provide at least nine (9) months prior notice to the Contractor for this option. However, nothing in this Contract requires the City to deliver any portion of the Food Waste or Vegetative Food Waste portion of the waste stream to the Contractor for processing unless the City elects to do so in accordance with Section 130.

Section 15. Contract Term.

This Contract is entered into as of this ____ day of _____, 2001. Actual Yard Waste processing services will begin April 1, 2001 and continue through March 31, 2008.

The City, at its option, may extend this Contract for a two successive one-year periods to March 31, 2009 or March 31, 2010 by notifying the Contractor on or before June 30, 2008 and June 30, 2009, respectively. If the City extends this Contract, the same terms, conditions, and method of payment shall apply during the extension period.

Section 20. Definitions.

In addition to capitalized terms that are defined elsewhere, the following meanings apply:

“City” means the City of Seattle.

“Contaminated Waste” means any Yard Waste, Food Waste and/or Vegetative Food Waste that is commingled with Unacceptable Waste.

“Food Waste” means vegetable and other food scraps, including meat, dairy products, grease and bones; paper which has been contaminated with food, fat or grease; and

soiled paper including paper towels, paper plates, tissue and waxed paper. Food Waste may be co-mingled with Yard Waste at the City's option.

"Recycle" or "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than incineration (including incineration for energy recovery) or other methods of disposal.

"Unacceptable Waste" means: (1) any material of which the handling of, transportation to, or disposal at the Contractor's facility would constitute a violation of any federal, state or local law, regulation, rule, code, permit or permit conditions; (2) any material that is now or hereafter defined by federal or State law as radioactive, dangerous, hazardous, or extremely hazardous; (3) vehicle tires, asbestos, roofing materials, plastic and other such non-compostable materials; (4) human or animal excrement; (5) tree limbs in excess of four inches in diameter and rocks in excess of two inches in diameter; and (6) material, whether or not compostable, outside the definitions of Yard Waste. Provided, however, that co-mingled Vegetative Food Waste or Food Waste shall not be deemed Unacceptable Waste to the extent the City has exercised its option in accordance with Section 130.

"Vegetative Food Waste" means vegetable food scraps. It excludes meat, dairy products, grease and bones and paper which has been contaminated with food, fat or grease. Vegetative Food Waste may be co-mingled with Yard Waste at the City's option.

"Yard Waste" means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and a small number of incidental rocks not over two (2) inches in diameter; and biodegradable waste approved for the Yard Waste programs by the City. Yard Waste does not include loose soils, Food Waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; noxious weeds and soil contaminated with hazardous substances.

Section 25. City Responsibilities.

The City shall be responsible for:

- 1) Making payments contemplated by this Contract;
- 2) Inspecting Contractor performance;
- 3) Maintaining its collection contracts and Yard Waste program;
- 4) Ensuring that all Yard Waste collected under separate City contracts, or accepted at City transfer stations is delivered to the Contractor's processing facility; and
- 5) In accordance with Section 130, disposing of Contaminated or Unacceptable Waste delivered to Contractor's processing facility.

Section 30. Contractor Responsibilities.

The Contractor shall be responsible for:

- 1) Furnishing all skill, labor, equipment, materials, supplies and utility services required for providing all services in accordance with this Contract;
- 2) All actions and activities of its subcontractors;
- 3) Supplying all records and information required by this Contract;
- 4) Securing at Contractor's expense all governmental permits and licenses and required regulatory approvals (including those required by City ordinance);
- 5) Paying all applicable taxes;
- 6) Complying with applicable laws and regulations;
- 7) Performing all work in a timely, thorough and professional manner; and
- 8) All wage increases for Contractor's employees, any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other business risks that may affect the performance of this Contract.

Section 40. Contractor Representations and Warranties.

The Contractor represents and warrants to the City as follows:

- 1) Organization and Qualification. The Contractor is duly incorporated, validly existing and in good standing under the laws of the State of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.
- 2) Authority.
 - a) The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of Contractor under this Contract in accordance with its terms.
 - b) This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.
- 3) Government Authorizations and Consents. The Contractor has or will obtain prior to the first date on which any materials will be processed under this Contract, such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract.
- 4) Compliance With Laws. The Contractor is not in violation of any law, ordinance or regulation, the consequence of which violation will or may materially affect

Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the state of Washington, or its ability to perform its obligations under this Contract.

- 5) Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.
- 6) Independent Examination. In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, material needed, and of applicable taxes, permits, and laws.

Section 50. City Representations and Warranties.

The City represents and warrants to the Contractor as follows:

- 1) Organization and Qualification. The City is a municipal corporation and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.
- 2) Authority.
 - a) The City has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of the City under this Contract in accordance with its terms.
 - b) This Contract has been validly executed and constitutes a valid and legally binding and enforceable obligation of the City.
- 3) Government Authorizations and Consents. The City has such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract, and no consent, approval or authorization of or declaration, registration or filing with any governmental or regulatory body is required to be obtained or made by the City as a prerequisite to its execution of this Contract or its performance of its obligations contemplated hereby.
- 4) Compliance With Laws. The City is not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect the City's ability to perform its obligations under this Contract. The City is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its solid waste operations or its ability to perform its obligations under this Contract.

- 5) Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by the City pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

Section 60. OSHA/WISHA, Health and Environmental Laws.

The Contractor shall comply with the federal Occupation Safety and Health Act of 1970, as amended ("OSHA") and the Washington Industrial Safety and Health Act of 1973, as amended ("WISHA") (RCW Chapter 49.17), and with standards and regulations issued to implement these statutes from time to time.

The Contractor is also responsible for meeting all regulations, and standards applicable to processing Yard Waste, including without limitation environmental and health laws, regulations and standards.

Section 70. Contractor's Office.

The Contractor shall maintain an office with local telephone service and such staff as needed to coordinate with City staff. Office hours shall be 8:00 a.m. to 5:00 p.m., Monday through Friday.

B. PROCESSING SERVICES

Section 100. Yard Waste Processing

The Contractor shall process Yard Waste [including co-mingled Food Waste or Vegetative Food Waste under Section 130] into a marketable product such as soil amendment product, animal feed product or anaerobic digestion gaseous byproducts, and shall not deposit Yard Waste [including co-mingled Food Waste or Vegetative Food Waste under Section 130] as Garbage at a landfill or incinerator. Marketing of the product is at the Contractor's risk, expense and profit (or loss).

The Contractor may arrange to use the facilities and equipment of another Yard Waste processor or establish its own permitted processing facility. In either event, the processing facility shall conform to applicable zoning, Health Department and, if applicable, Puget Sound Air Pollution Control Agency regulations and any other rules, regulations, or ordinances.

The Contractor's arrangements for processing Yard Waste, at both the primary and back-up Yard Waste processing facilities, shall be subject to review and approval before the Contractor begins processing Yard Waste, and the facilities shall be subject to inspection by City staff during business hours to determine compliance with this Contract and all the rules and regulations pertaining to processing.

Section 110. Primary Yard Waste Processing Facility.

The Contractor's primary processing facility shall be its existing Maple Valley composting facility, 17825 Cedar Grove Road S.E., Maple Valley, Washington 98038. The processing facility shall accept Yard Waste [including co-mingled Food Waste or Vegetative Food Waste under Section 130] from the City, or any City collection contractor, Monday through Saturday, 7:00 am to 7:00

pm March through October and Monday through Friday, 7:00 am to 7:00 pm November through February, unless the City and the Contractor make alternate arrangements.

The processing facility shall contain a truck scale for weighing all trucks in and out of the facility. Tare weights shall not be used for billing the City.

Section 120. Back-up Yard Waste Processing Facility.

To avoid disruption of the Yard Waste collection program through a temporary shutdown in processing, the Contractor shall have an agreement with another permitted processing facility(s) for processing Yard Waste. The Contractor represents and warrants that as of the date hereof each of the following facilities is so permitted and that each has agreed to process Yard Waste as a back-up facility pursuant to this Section 120:

Cedar Grove Composting
19819-67th Avenue N.E.
Arlington, Washington

Bailey Compost
12711 Springhetti Road
Snohomish, Washington 98296

Pacific Topsoils
14002-35th Avenue S.E.
Bothell, Washington 98012

If the Contractor is unable to meet Health Department regulations or other pertinent state, local or other regulations, or is unable for any reason whatsoever to accept Yard Waste for processing at its specified primary processing facility, the Contractor, at its own initiative or upon notification from the City, shall direct the City to one of the back-up Yard Waste processing facilities identified above.

The Contractor shall be responsible for payments required to contract for use of the back-up facility. The City shall adjust Contractor payments for any changes to the Yard Waste transport costs as a result of delivery to a back-up facility. The City shall bill the Contractor for any additional City operational costs as a result of the City delivering Yard Waste to the back-up facility. The City will document these operational costs.

Changes in transport mileage from Rabanco's 3rd and Lander Street facility will be calculated at the rate of \$.67 per ton mile, one way. Any cost changes will be calculated as follows:

- 1) The City shall measure the distance from Rabanco's 3rd and Lander Street facility to the Cedar Grove Yard Waste processing facility located in Maple Valley, in miles, one way, along the most direct route on streets usable by transfer trucks;
- 2) The City shall measure the distance from Rabanco's 3rd and Lander Street facility to the back up Yard Waste processing facility, in miles, one way, along the most direct route on streets usable by transfer trucks;
- 3) The City shall then multiply the difference in those two distances by the number of tons of Yard Waste actually delivered by Rabanco to the back up Yard Waste

processing facility;

- 4) The City shall then multiply the ton-miles by the rate of \$.67 per ton mile; and
- 5) If the back up facility is closer to the 3rd and Lander Street facility, the City will credit the Contractor with the result from 4) above. If the back up facility is farther away from the 3rd and Lander Street facility, the City will charge the Contractor with the result from 4) above.

Section 130. Food Waste/Vegetative Food Waste Processing

Nothing in this Contract requires the City to deliver any part of the Food Waste or Vegetative Food Waste portion of the waste stream to the Contractor for processing. However, per Section 10, if the City elects to begin collection of co-mingled Yard Waste and Food Waste or collection of co-mingled Yard Waste and Vegetative Food Waste, the City will deliver and the Contractor is required to accept and process the material under the following conditions:

- 1) If the City elects to expand Yard Waste collection to include Vegetative Food Waste, and the Contractor is not required to handle the co-mingled stream any differently than would be required for a comparable increase in Yard Waste tonnage, then the Yard Waste processing price in Section 300 will be applied to the additional tonnage created by delivering Vegetative Food Waste.
- 2) If the City elects to expand Yard Waste collection to include Food Waste and such co-mingling of all Food Waste requires a different manner of handling than a comparable increase in Yard Waste tonnage, then:
 - a) The Contractor shall accept and process the additional tonnage, if requested to do so by the City;
 - b) The processing technology used, either by the Contractor or a subcontractor, will meet all regulatory requirements;
 - c) The City will review plans and costs of all modifications to the Contractor facilities needed to process the co-mingled stream; and
 - d) The City will adjust the per ton processing payment to provide the Contractor with incremental revenues sufficient to cover its incremental costs, with a reasonable rate of return.
- 3) The City and the Contractor will cooperatively pursue state and federal grants that may be available for the establishment or expansion of composting activities.

Section 140. Handling/Disposal of Contaminated Waste.

The City will be responsible for the disposal of Contaminated Waste or Unacceptable Waste delivered to Contractor by the City or any City collection contractor. Contractor will, without cost to the City, segregate the Contaminated Waste and/or Unacceptable Waste (segregating tires separately) at the primary or back-up facility, as the case may be, and will load the Contaminated Waste and/or Unacceptable Waste into City vehicles or containers. Upon notice from the Contractor, the City shall promptly accept and collect the Contaminated Waste and/or Unacceptable Waste at the facility and dispose of it. The cost of transport and disposal of up to

a total of 1000 tons of Contaminated Waste and Unacceptable Waste shall be at the City's expense. However, the Contractor shall record and track the tons of Contaminated Waste and Unacceptable Waste accepted by the City. For every ton beyond 1000 tons which the City accepts, transports and disposes, the City shall charge the Contractor \$80 per ton.

Section 150. Marketing of Material.

The Contractor is responsible for establishing transportation and marketing arrangements for the processed materials. Equipment utilized for storage and transport of materials to markets may be owned or leased by the Contractor or other parties.

Section 160. Disposal Prohibition.

The Contractor is prohibited from disposing of any Yard Waste, Food Waste or Vegetative Food Waste delivered under this Contract as Garbage or marketing materials that the Contractor knows, or has reason to know, will be disposed of as Garbage. Violation of this Contract provision shall be cause for termination.

Section 170. Pilot Tests.

The City may require the Contractor to conduct pilot tests that temporarily change one or more provisions of this Contract. A pilot test is an experiment with a new processing method, and/or a different type of service. A pilot test may require additional record keeping. The City and the Contractor shall negotiate in good faith and sign a letter of agreement covering the expected cost and the pilot program duration prior to commencing any such test.

C. REPORTING REQUIREMENTS

Section 200. Weight Receipts.

The Contractor shall provide to the City each week the previous week's weight receipts for all materials delivered by the City, or the City's contractor, to the processing facility. Weight slips must contain gross and net weights (tare weights are not allowed), truck number, and the date and time of the weight slip. All information on weight slips must be legible or any payment due for those tonnages will be withheld. False or altered weight slips shall be cause for Contract termination.

Section 210. Monthly, Quarterly and Annual Reports.

The Contractor shall submit monthly reports for the length of the Contract period commencing upon Contract signing. These reports shall be in electronic format and shall be due within ten working days after the end of the month. The Contractor shall not receive its monthly compensation until all items required in the report are submitted to the City. At a minimum, the reports shall include:

- 1) Summary of tonnages, and copies of individual weight receipts of all delivered material (individual weight receipts to include date, time, truck number, gross and net weight, and origin of truck);
- 2) Summary of tonnages, and copies of individual weight receipts of all Contaminated Waste and Unacceptable Waste accepted by the City for disposal;
- 3) Summary of tonnages of all processed material sold, by type of product;

- 4) Average market prices based on actual sales of each material sold that month; and
- 5) Status of all complaints or Contract violation notices forwarded to the Contractor by letter from the City or from regulatory agencies.

The Contractor shall submit a quarterly report on July 15th, October 15th, and January 15th of each Contract year. The quarterly report shall include:

- 1) Summary of monthly data;
- 2) Detailed data to allow analysis of processing efficiencies including average number of trucks tipped per day, average tons processed per day, the practicality of making changes to the processing system, and the strength of processing market; and
- 3) Discussion of problems and noteworthy experience in program operation; and
- 4) Contractor recommendations for improvements.

The Contractor shall submit a yearly report within 30 days of the end of each Contract year. At a minimum, the reports shall include:

- 1) A collated summary of the detailed revenue information contained in the quarterly reports, and a summary of materials processed for the year;
- 2) A discussion of highlights and problems and measures taken to resolve problems and increase efficiency; and
- 3) An analysis of the Contract's impact, if any, on industries providing compost products in the region.

D. COMPENSATION

Section 300. Payment for Processing Services.

The City shall pay the Contractor monthly for all tons of Yard Waste delivered to the Contractor's receiving facility during the month documented per Section 210. From April 1, 2001 through March 31, 2002, the City will pay the Contractor a rate of \$22.50 per ton adjusted by the annual adjustment in Section 310.

Section 310. Adjustments in Subsequent Contract Years.

The City will compute compensation payable for the second and subsequent Contract years as follows:

The **per ton rate from the preceding year** shall be multiplied by 1.0 plus **80%** of the percentage difference between the most recent year-end "Consumer Price Index" computed by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle-Everett Metropolitan Area for Urban Wage Earners and Clerical Workers (CPI-W), or successor indices, and the previous years CPI.

Section 320. Payment Procedure.

The Contractor shall submit monthly invoices to the City within ten working days from the end of the month. These invoices shall itemize the monthly amounts due. Copies of weight slips required must precede or accompany invoices. Payment will be due three (3) weeks after receipt of properly documented Contractor invoices.

Section 330. Wage Increases for Employees.

All wage increases for employees of the Contractor granted during the term of this Contract shall be the sole responsibility of the Contractor. Any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other foreseeable business risks that may affect the performance of this Contract shall be to the Contractor's advantage or expense respectively, except as may be noted herein.

Section 340. Withholding and Payment of Tax Liens and Judgments.

The City may withhold and pay to the United States of America or to any federal court, or the State of Washington or any state court, the amount claimed in a levy filed by the United States Internal Revenue Service or the Washington State Department of Revenue, respectively; the amount directed by a writ of garnishment, writ of attachment, or writ of execution, or by an order of a Bankruptcy Court, and/or by any court order, each for monies claimed from the Contractor. When presented such an order, the City may in its discretion institute interpleader proceedings. The City may make a payment in conjunction with the interpleader action to the appropriate court. Payments so made or deposited into the registry of the court shall be satisfaction of payment due to the Contractor.

Section 350. Withholding and Payment to Workers.

If any worker doing work for the Contractor (or any subcontractor) shall be paid by a postdated check, a check presented and dishonored for insufficient funds on account, or other negotiable instrument or promissory note that is not payable on the worker's regular payroll date or paid when presented, the worker may present the unpaid document to the City and request payment directly from the City. The City shall contact the Contractor, and if payment is not made within twenty-four hours, the City may issue a warrant drawn on the City for the amount of the unpaid wages and the City shall deduct the amount paid, together with a service charge of Thirty Dollars (\$30.00) per warrant from the next succeeding payment to be made to the Contractor.

E. EQUAL OPPORTUNITY, NON-DISCRIMINATION AND WMBE

Section 400. Equal Employment Opportunity.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bonafide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, promotion, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the City setting forth this non-discrimination section.

Section 410. Equal Employment Opportunity - Implementation.

The Contractor shall obtain in writing from each subcontractor or participant in a joint venture, an affirmative action policy or program and retain such written policy or program for inspection by the Seattle Executive Services Department.

The Contractor and each subcontractor or joint venturer performing work under this Contract shall prepare for and submit quarterly to the City's Executive Services Department reports that document compliance with the provisions of Section 400 (SMC 20.44.030). All reports shall be in such form as may be specified by the Executive Services Department.

The Contractor shall be responsible for the compliance of subcontractors or joint venturers. Appropriate sanctions for noncompliance will be imposed on the Contractor. The requirements for the Contractor apply to subcontractors, regardless of tier. The Contractor's responsibility includes obtaining equal employment opportunity documentation from subcontractors or joint venturers and reviewing the same as to validity and compliance. The Contractor shall submit such documentation concurrent with the Contractor's own submittals.

The Contractor will, prior to commencement and during the term of this Contract, furnish to the Director of Executive Services (as used herein "Director" means the Director of the Executive Services Department or his/her designee) upon his/her request and on such form as may be provided by the Director therefore, a report of the affirmative action taken by the Contractor in implementing the terms of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purposes of investigation to determine compliance with this provision. If upon investigation the Director finds probable cause to believe that the Contractor has failed to comply with any of the terms of these provisions, the Contractor and the Director of SPU shall be so notified in writing. The Director of SPU shall give the Contractor an opportunity to be heard, after ten days' notice. If the Director of the SPU concurs in the findings of the Director, the Director of the SPU may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the terms of these provisions. Failure to comply with any of the terms of these provisions shall be a material default of this Contract.

The foregoing provisions will be inserted in all subcontracts for work covered by this Contract.

Section 420. Contractor's Hiring Goals.

Without granting preferential treatment on the basis of gender, and without compromising the Contractor's commitment to equal opportunity in employment practices, the Contractor agrees to use good faith efforts to ensure there are fair opportunities for women to participate in its workforce. The Contractor shall provide the City of Seattle Executive Services Department with quarterly reports demonstrating its good faith efforts to comply with this goal and with SMC 20.44.10. These reports will be shared with the Seattle City Council on an annual basis.

Good faith effort as used in this Section refers to the Contractor's affirmative efforts to ensure there are fair opportunities for qualified women to participate in the non-traditional aspects of the solid waste processing industry.

Evidence of the Contractor's good faith efforts shall include but will not be limited to:

- 1) Efforts to ensure awareness by women of employment opportunities in the industry through (1) providing materials to be circulated and distributed concerning the breadth of opportunities, including notices of full and part-time position openings and (2) making clear to potential applicants the Contractor's commitment to bring eligible employees into its workforce, regardless of gender;
- 2) Efforts to assist all employees without regard to gender in being able to handle the physical demands of the job through (a) training in safety procedures, and (b) training in driving and operating equipment; and
- 3) Efforts to maintain an equal opportunity work environment by (a) having regular and semi-annual planning/training sessions with workers outlining the Contractor's policy prohibiting sexual harassment and its intention to strictly enforce the policy, (b) offering women employees training to mitigate possible intimidating aspects of working in a traditionally male dominated occupation, and (c) providing special training to supervisory personnel for purposes of EEO and sexual harassment policy implementation.

Section 450. Non-Discriminatory Service.

The Contractor will not discriminate in the provision of service or quality of service on account of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide qualification to or for service.

Section 460. Women and Minority Business Enterprise Requirements.

No utilization requirements for Women and Minority Business Enterprises ("WMBEs") shall apply to this contract. No minimum level of WMBE sub-contracting shall be required as a condition of receiving this Contract and no preference will be given to the Contractor for its WMBE utilization or WMBE status.

The Contractor shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

The Contractor shall maintain, for at least 12 months after completion of this Contract, relevant records and information necessary to document the Contractor's utilization of WMBEs and other businesses as subcontractors and suppliers under this Contract and in its overall public and private business activities. The Contractor shall also maintain all written quotes, bids, estimates, or proposals submitted to the Contractor by all businesses seeking to participate as subcontractors or suppliers under this Contract. The City shall have the right to inspect and copy such records.

The City encourages the utilization of WMBEs in all City contracts. The City encourages the following practices to open competitive opportunities for WMBEs:

- 1) Attending a pre-bid conference, if scheduled by the City, to provide project information and to inform WMBEs of contracting and subcontracting

opportunities.

- 2) Placing all qualified WMBEs attempting to do business in The City of Seattle on solicitation lists, and providing written notice of subcontracting opportunities to WMBEs capable of performing the work, including without limitation, all businesses on any list provided by The City of Seattle, in sufficient time to allow such businesses to respond to written solicitations.
- 3) Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including WMBEs.
- 4) Establishing delivery schedules, where the requirements of this Contract permit, that encourage participation by WMBEs.
- 5) Providing WMBEs that express interest with adequate and timely information about plans, specifications and requirements of this Contract.
- 6) Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, The City of Seattle, and other organizations that provide assistance in the recruitment and placement of WMBEs.

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of this Contract for which the City may terminate the Contractor per Section 510 of this Contract. The Contractor may also be subject to damages and sanctions provided for by this Contract and by applicable law.

Section 470. NonDiscrimination in Employee Benefits.

The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits (“equal benefits”) to its employees with domestic partners as the Contractor provides to its employees with spouses. At the City’s request, the Contractor shall provide complete information and verification of the Contractor’s compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract.

Any violation of this Contract Section 470 shall be a material breach of the Contract for which the City may:

- 1) Require the Contractor to pay liquidated damages in the amount of five hundred dollars (\$500.00) per day for each day the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
- 2) In the event the Contractor willfully refuses or repeatedly fails to comply with the requirements of SMC Ch. 20.45, terminate the Contract; or
- 3) Disqualify the Contractor from bidding on, responding to or being awarded a City contract for a period of up to five (5) years; or

- 4) Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

F. SECURITY, LIABILITY AND DAMAGES

Section 500. Performance Bond.

The Contractor shall provide and maintain at all times a valid, irrevocable Contractor's Performance and Payment Bond for Two Hundred Fifty Thousand Dollars (\$250,000). The bond shall be issued for the Contract term.

The performance bond must be in place prior to the beginning of the Contract.

The bond shall be for the use and benefit of the City, with a surety company authorized to do business in the State of Washington and acceptable to the City. Said bond shall be in full force effect and shall be the obligation of the surety unless Contractor shall faithfully perform all of the provisions of this Contract and pay all laborers, mechanics, subcontractors, materialmen and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract. Said bond shall contain appropriate recitations that it is issued pursuant to this Section of this Contract, that it shall be construed to meet all requirements specified herein and that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void. Such bond shall be submitted to, and subject to approval of the City Attorney's Office prior to its effective date.

Failure of the Contractor to furnish and maintain said Performance and Payment Bond shall be considered a material breach of this Contract and grounds for its immediate termination at the option of the City.

Section 510. Default of Contractor.

This Section is independent, notwithstanding any other provisions of this Contract. Except as provided in the last paragraph of this Section 510, the Contractor may be held in default of the Contract in the event that the Contractor:

- 1) Is unable to accept, for more than a 24 hour period of time, excluding Sunday, Yard Waste, [including co-mingled Food Waste or Vegetative Food Waste to the extent applicable under Section 130] for processing at the primary or back-up processing facility; or
- 2) Repeatedly neglects, fails, or refuses to comply with any material term of the Contract, after having received notice of its obligation to do so.

To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven calendar days of a hearing at which the Contractor may show cause why it should not be declared in default. In the event the Contractor fails to show, to the satisfaction of the City, why the Contractor should not be declared to be in default of this Contract, the City may declare the Contractor in default.

In declaring the Contractor to have defaulted on the Contract, the City also may order the Contractor to discontinue further performance of work under the Contract, transfer the obligation

to perform such work from the Contractor to the surety on the Contractor's performance bond, and take any other action the City deems advisable.

Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment hereof, for the purpose of completing the work under the Contract; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefor. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.

In the event the surety on the Contractor's performance bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is desired by the City, the materials and equipment necessary for processing purposes for a period of up to six months following the date of the declaration of default by the City, without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such processing a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.

In the event the City secures the performance of work under the Contract at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City.

All payments due the Contractor at the time of default, less amounts due the City from the Contractor, shall be applied by the City against damages suffered and expense incurred by the City be reason of such default, any excess shall be paid to the Contractor unless otherwise provided herein.

Notwithstanding the provisions of this Section, a delay or interruption in the performance of all or any part of the Contract resulting from causes beyond the Contractor's control shall not be deemed to be a default and the rights and remedies of the City provided for herein shall be inapplicable; provided that labor disputes involving Contractor's employees shall not be considered a cause beyond the Contractor's control.

Section 520. Insurance.

Contractor shall at all times during the term of this Contract, obtain and maintain continuously, at its own expense, and file with the City and the City's Risk Manager, evidence, as set forth in subsection 5) of this section, a policy or policies of insurance as enumerated below:

- 1) A policy of **Commercial General Liability Insurance**, written on an insurance industry standard occurrence form (CG 00 01), including all the usual coverages known as:
 - Premises/Operations Liability
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual Liability
 - Independent Contractors Liability
 - Stop Gap/Employers Contingent Liability
 - Explosion, Collapse, or Underground (XCU)
 - Fire Damage

Such policy(ies) must provide the following minimum limit:

<u>Bodily Injury and Property Damage -</u>	
\$ 2,000,000	General Aggregate
\$ 2,000,000	Products & Completed Operations Aggregate
\$ 1,000,000	Personal & Advertising Injury
\$ 1,000,000	Each Occurrence
\$ 100,000	Fire Damage

Stop Gap Employers Liability	
\$ 1,000,000	Each Accident
\$ 1,000,000	Disease - Policy Limit
\$ 1,000,000	Disease - Each Employee

If a claims made policy is used, it must have an unaltered extended discovery period provision.

- 2) A policy of **Business Automobile Liability**, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto)., an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported.

Such policy(ies) must provide the following minimum limit:

<u>Bodily Injury and Property Damage -</u>	
\$ 1,000,000	per person
\$ 2,000,000	per occurrence

- 3) A policy of **Worker's Compensation**. The Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If the Contractor is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Contractor shall so certify by a letter signed by a corporate officer and setting

forth the limits of any policy of excess insurance covering its employees. The Contractor further waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance, of the Revised Code of Washington.

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of the Contractor.

If any such policy is written on a claim made form, the retroactive date shall be prior to or coincident with the effective date of this Contract. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims made form coverage shall be maintained by Contractor for a minimum of two years following the expiration or earlier termination of this Contract, and Contractor shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

4) **Additional Insured and Primary Insurance Provisions:**

Such insurance, as provided under items (1), (2), above, shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City. In addition, Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the Contractor's insurance.

5) **Evidence of Insurance:** The following documents must be provided as evidence of insurance coverage:

- A copy of the policy's declarations pages, showing the Insuring Company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
- A copy of the endorsement naming The City of Seattle as an Additional Insured, showing the policy number, and signed by an authorized representative of the insurance company for Business Auto Liability, and for the Commercial General Liability policy a Form CG2010 (ISO) or equivalent.
- A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
- A copy of an endorsement stating that the coverages provided by this policy to the City, or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle.
- A copy of A "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that - except with respect to the limits of insurance,

and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).

- 6) **Policy Rating**: All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.
- 7) **Self-Insurance**: Should Contractor be self-insured under item (1), (2) and (3) above, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable - stipulating if actuarially funded and fund limits; plus any excess declaration pages to meet the contract requirements. Further, this letter should advise how Contractor would protect and defend the City of Seattle as an Additional Insured in their Self-Insured layer, and include claims handling directions in the event of a claim.
- 8) **Subcontractors** - Contractor shall include all subcontractors as insureds under its policies or shall furnish separate evidence of insurance as stated above for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.

Section 530. Indemnity.

The Contractor(s) shall defend, indemnify and save harmless The City of Seattle and the City's officers, employees and agents from any and every claim and risk, and from all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind (collectively "losses"), on account of injury to or death of any and all persons (including but not limited to the Contractor, its agents, employees, subcontractors and their successors and assigns as well as the City or the City's agents, and all third parties), and/or on account of all property damage of any kind, whether tangible or intangible, including loss of use resulting therefrom, in connection with or related to the work performed by Contractor under this Contract, or in connection with or related to (in whole or in part by reason of) the presence of the Contractor or its subcontractors, or their property, employees or agents, upon or in proximity to the property of The City of Seattle, or any other property (upon which the Contractor is performing any work called for), except only those losses resulting from the negligence or wilful misconduct of The City of Seattle, or the City's officers, employees or agents.

For purposes of the Contractor's indemnification obligations under this Section 550 only, the Contractor hereby waives its immunity under industrial insurance, Title 51 RCW. The Contractor agrees that this waiver was specifically and mutually negotiated by the City and the Contractor.

G. ANCILLARY PROVISIONS

Section 600. Assignment or Pledge of Moneys by the Contractor.

The Contractor shall not assign or pledge any of the monies due under this Contract without securing the written approval of the surety on the performance bond and providing at least thirty (30) calendar days' prior notice to the City of such assignments or pledge together with a copy of the surety's approval thereof. Such assignment or pledge, however, shall not release the Contractor or its sureties from any obligations or liabilities arising under or because of this Contract.

Section 610. Assignment; Subcontracting; Delegation of Duties.

The Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract except as expressly permitted by this Contract without the prior written approval of the City which approval will not be unreasonably withheld or delayed.

In the event of an assignment, subcontract or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

Section 620. Records.

The Contractor shall maintain in its office in King County full and complete accounting records, prepared in accordance with generally accepted accounting principles, reflecting Contractor's work on this Contract. The City may require an inspection and analysis of such books and records at any reasonable time. Such inspection will be conducted by one of the following firms:

Deloitte & Touche
Arthur Andersen & Co.
Ernst and Young

KPMG Peat Marwick
Price Waterhouse Coopers

or by another reputable, competent certified public accounting firm with experience in auditing public service companies selected by mutual agreement of the City and the Contractor.

All information obtained as a result of any such inspection will be kept confidential, except as disclosure may be required by public disclosure laws.

Section 630. Contract Rights.

The parties reserve the right to amend this Contract from time to time by mutual agreement in writing.

Rights under this Contract are cumulative, and in addition to rights existing at common law.

Payment by the City and performance by the Contractor do not waive their contract rights.

Failure by either party on any occasion to exercise a contract right shall not forfeit or waive the right to exercise the right another occasion. The use of one remedy does not exclude or waive the right to use another.

Section 640. Interpretation.

This Contract shall be interpreted as a whole and to carry out its purposes. This Contract is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions.

Captions are for convenient reference only. A caption does not limit the scope or add commentary to the text.

Section 650. Law; Venue.

The laws of the State of Washington and Charter and Ordinances of the City shall govern the validity, construction and effect of this Contract. The venue for any claims, litigation, or causes of action between the parties shall be in the Superior Court of the State of Washington for King County.

Section 660. Notices.

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger, by certified or registered mail, return receipt requested, or by fax to the parties at the following respective addresses:

To the City:

The City of Seattle
Seattle Public Utilities
505 Dexter Horton Building
710 - 2nd Avenue
Seattle, Washington 98104
Attn: Ed Steyh
Phone: (206) 684-7666
Fax: (206) 386-0096

To the Contractor:

Cedar Grove Composting Inc.
7343 East Marginal Way S.
Seattle, Washington 98108
Attn: Steve Banchemo
Phone: (206)
Fax: (206)

Either party may from time to time designate a new address for notices.

Section 670. Severability.

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid or unenforceable, and the remainder of the Contract still fulfills its purposes, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Contract by having their representatives affix their signatures below.

CEDAR GROVE COMPOSTING, INC.

THE CITY OF SEATTLE

By _____
J. STEPHAN BANCHERO, Jr.
President

By _____
DIANA GALE, Managing Director
Seattle Public Utilities

Date: _____

Date: _____

Authorized by Ordinance Number _____